IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	**MAIL STOP AF**
Robert S. Block	Group Art Unit: 2617
Application No.: 08/697,542	Examiner: Vivek Srivastava
Filed: August 27, 1996	Confirmation No.: 9969
For: METHOD AND APPARATUS FOR INFORMATION LABELING AND CONTROL	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejections in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal and a one month Petition for Extension of Time.

Applicants respectfully submit that the current record does not provide a sufficient basis on which to proceed with the Appeal. Claims 27, 31, 34, 45, 47 and 61-66 are presently pending. Claims 1-26, 28-30, 32-33, 35-44, 46 and 48-60 have been canceled.

Independent Claims 27 and 31 have been allowed. Claim 47 has been objected to by the Examiner. Independent Claims 34, 45, 61, 63, 65 and 66 are subject to the Appeal.

A. The Hite Patent Does Not Disclose Scanning A Program Information Label to Ascertain The Instantaneous Content Level As Recited in Claims 34, 61, 63 and 66.

Claims 34, 61 and 63 recite scanning a program information label to ascertain the instantaneous content level of the program over the duration of the program.

It further recites a level of detail that is not disclosed or suggested by the Hite reference, namely, scanning the program information label to ascertain the instantaneous content level of the program over the duration of the program.

The Final Office Action dated January 25, 2006, refers to the Hite patent at column 4, lines 34-40 as disclosing the foregoing features. However, taking this paragraph of the Hite patent, in context with its description of commercial identifier (CID) codes, shows that the Hite patent does not disclose or suggest scanning and ascertaining an instantaneous content level of a program as recited in independent claims 34, 61, 63 and 66. Column 3, lines 43-64 of the Hite patent discloses that a commercial is analyzed based on a commercial identifier code (CID) that is appended to it. The commercials are then delivered to a point of usage. The commercials are classified among three categories: 1) Non-pre-emptable, 2) Conditionally pre-emptable, or 3) Unconditionally pre-emptable. Depending upon the circumstances in which each of these categories of commercials are to appear in a program, the types of priorities and classifications associated with the commercials may be set. For instance, higher priority commercials may be substituted for commercials classified as unconditionally pre-emptable. The pre-emptable commercials have a CID to indicate under what circumstances a more suitable commercial may be substituted.

Commercials scheduled during an exemplary downhill ski racing competition may all be non-pre-emptable. In this case, no commercial, other than those sent to the point of usage, would be displayed no matter what the content of the instantaneous program. Alternatively, some commercials may be conditionally pre-emptable or unconditionally pre-emptable, in which case the context code may be used to preempt set commercials.

The relied upon text from the Hite patent does not disclose or suggest scanning a program information label to ascertain the instantaneous content level of the program over the duration of the program as recited in claims 34, 61, 63 and 66. Therefore, it is respectfully submitted that Hite does not disclose or suggest all of the features recited in the independent claims 34, 61, 63 or 66.

B. The Hite Patent Does Not Disclose Or Suggest Scheduling An Advertisement As Recited In Claims 34, 45, and 61-66

Claim 34 recites scheduling an advertisement within the program within a predetermined time interval of a predetermined value of the instantaneous content level of the program information level. Claim 61 recites scheduling an advertisement within a predetermined time interval of an occurrence of the instantaneous content level above a predetermined threshold value. Claim 63 recites scheduling an advertisement outside a predetermined time interval of an occurrence of the instantaneous level above a predetermined threshold value.

Hite does not disclose a system that is aware of the scheduling of pre-emptable commercials. In addition, the system disclosed in Hite relys upon the context code of the commercial to make the determination of whether the commercial is to be presented disclosed during the program. In contrast, exemplary embodiments of Applicant's invention uses the instantaneous program content to determine whether a commercial will be displayed within a predetermined time of the occurrence of the instantaneous content. Hite does not disclose the ability to schedule commercials, or disclose that an advertisement is scheduled to be presented within a predetermined interval of the content of the information having the at least one aspect of the commercial as recited in claims 45 and 65.

The Hite patent would prevent such presentation of an advertisement if the commercials for that show were all non pre-emptable. In fact, a further review of column 4, lines 8-16 of the Hite patent, discloses and that there is a prioritization sequence that determines which commercial to display and which to ignore. This priority schedule does not take into account, even given the context code, the occurrence of a particular event.

For instance, if there was a particularly violent crash in which a skier was injured, some advertisers may not wish for their skiing equipment commercial to be shown at the typical quarter hour interval immediately after such an accident. In contrast, the claimed system can take into effect the aspect of the violent crash and schedule the skiing equipment commercial further away in time from the occurrence of the violent crash. The Hite patent does not disclose or suggest such capability

and is respectfully submitted that claims 45 and 65 are allowable for at least these reasons.

The Hite patent does not take into effect scheduling advertisements to be presented within a predetermined time interval of the content of the information having the at least one aspect as recited in the claims. The Hite patent discloses commercials having one of three categorical classifications. Scheduling is based on that classification, not on the occurrence of a predetermined time of the occurrence of content. A plurality of commercials are stored at the point of usage to be displayed to a viewer at an appropriate time. As argued by the Examiner, commercials are scheduled at predetermined points within a broadcast, such as on the quarter hour, and this is analogous to a predetermined time. But, based on the category of the commercial scheduled to be displayed, a commercial different from the commercial scheduled to be displayed may be displayed if it ranks higher in the prioritization sequence of commercials in the list of commercials to be presented. Hite's context codes can be used to display a commercial if it is in a specific channel or network or show. Also, it does not address the recitation in the claims that scheduling the presentation of an advertisement based upon the at least one aspect of the content of the information wherein the advertisement is scheduled to be presented within a predetermined time interval of the content of the information having at least one aspect. Hite will never change the predetermine scheduling of the presentation. Hite merely changes the commercial that will be displayed at the fixed time in the schedule.

C. The Hite Patent Does Not Disclose Or Suggest Features Of Claim 66

Determining one of the plurality of advertisements to be presented during said program based upon the instantaneous level of the frame of the program as recited in claim 66.

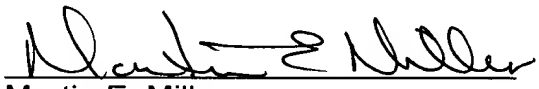
Nor does Hite disclose scheduling said one advertisement within the program outside a predetermined time interval of a predetermined value of the instantaneous content level of each frame of the program information label.

D. Conclusion

In conclusion, Applicants respectfully submit that the claims are allowable over the applied prior art reference for at least the above reasons. Withdrawal of the rejections and allowance of the claims is respectfully requested. If the Review Conferees determine that some of the rejected claims contain allowable subject matter, the Applicant may be willing to incorporate the allowable features into any claims found to remain rejected.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: May 25, 2006 By: 

Martin E. Miller
Registration No. 56022

P.O. Box 1404
Alexandria, VA 22313-1404
703.836.6620